Supreme Court, U.S.
FILED

No. _____ 98 547 SEP 28 1998

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In The

Supreme Court of the United States

October Term 1998

CHERYL APPERSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

1. Whether the District Court erred in finding that the Government's evidence was sufficient to convict the Petitioner of conspiracy to distribute cocaine, in violation of her right to due process of law under the Fifth Amendment.

2. Whether the District Court erred by enhancing the Petitioner's base offense level for sentencing purposes due to "obstruction of justice" where this is based solely on her testimony at trial, subjectively deemed untruthful, in violation of her right to due process of law under the Fifth Amendment.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1998

CHERYL APPERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

The Petitioner, Cheryl Apperson, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case entered on July 1, 1998.

CITATION TO OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in United States of America v. Cheryl Apperson (4th Circuit No. 97-4963) is an unpublished opinion which is filed with this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on July 1, 1998. The

jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

1. Amendment V to the United States Constitution.

STATEMENT OF THE CASE

The Petitioner, Cheryl Apperson, was named in Count One of a two (2) count superseding indictment returned by a Western District of Virginia Grand Jury on September 25, 1996. Count One charged the Petitioner with conspiracy to possess with intent to distribute and to distribute a mixture or substance containing cocaine base, or "crack," a Schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1). The Petitioner was arraigned on November 8, 1996 and entered a plea of not guilty.

The Petitioner was tried by a jury beginning July 21, 1997. The Honorable Judge James H. Michael, Jr. presided over the three (3) day jury trial. The Petitioner moved to dismiss the charges against her both after the government presented its evidence and after all the evidence was presented. Both motions were denied by the District Court. The jury rendered a guilty verdict on July 23, 1997, and the Petitioner was remanded into custody.

The Petitioner's sentencing was on November 20, 1997. She argued that the two (2) point enhancement to her base offense level was erroneous. The District Court had an evidentiary hearing as to the facts underlying the enhancement and determined that the enhancement was properly done. The Petitioner was sentenced to 200 months and 60 months supervised release. (App. 7-13) She timely filed her Notice of Appeal on November 26, 1997, appealing her conviction and her sentence.

On appeal to the Fourth Circuit the Petitioner argued that the evidence was insufficient to convict her of

conspiracy to distribute crack cocaine and that the District Court erred in enhancing her sentence due to "obstruction of justice" in her testimony at trial.

On July 1, 1998 the Fourth Circuit affirmed the Petitioner's conviction and sentence by unpublished opinion. A copy of the opinion is filed herewith. (App. 1-6)

SUMMARY OF ARGUMENT

1. The Government's evidence was insufficient to prove beyond a reasonable doubt that the Petitioner was guilty of one (1) count of drug conspiracy. The Government called a total of eighteen (18) witnesses. Seven (7) of the eighteen (18) were individuals who pled guilty to a conspiracy charge and were testifying in hopes of reducing their sentences. Not one of the eleven (11) witnesses who had no reason to lie mentioned the Petitioner at all. There were no packages seized from the Petitioner or her house. In other words, the evidence against the Petitioner was purely circumstantial and tainted by the witnesses who testified against her.

2. The District Court erred when it enhanced the Petitioner's base offense level by two points pursuant to U.S.S.G. § 3C1.1. In United States v. Dunnigan, 507 U.S. 87, 113 S.Ct. 1111; 122 L.Ed.2d 445 (1993), the United States Supreme Court discussed the standard the government had to follow when it had the burden of proving a defendant's obstruction of justice that would warrant the two (2) point enhancement. The time added to the Petitioner's sentence due to the enhancement was very close to a sentence she would have received had she been charged, tried and convicted for obstruction of justice and/or perjury. In light of the criminal nature of the conduct necessary to warrant the enhancement, the burden upon the government should be beyond a reasonable doubt, not the mere

preponderance of the evidence called for in United States v. Smith, 62 F.3d 641 (4th Cir. 1995).

ARGUMENT

I. Whether the District Court erred in finding that the Government's evidence was sufficient to convict the Petitioner of conspiracy to distribute cocaine, in violation of her right to due process of law under the Fifth Amendment.

When reviewing the sufficiency of the evidence to support a conviction, the Court assesses the record in the light most favorable to the government and affirms the verdict "unless no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." United States v. Al-Talib, 55 F.3d 923, 932 (4th Cir. 1995).

In order to prove conspiracy to possess cocaine base with intent to distribute, the government must establish beyond a reasonable doubt that: (1) an agreement to possess cocaine with intent to distribute existed between two or more persons; (2) the defendant knew of the conspiracy; and, (3) the defendant knowingly and voluntarily became a part of this conspiracy. United States v. Collazo, 732 F.2d 1200, 1205 (4th Cir. 1984), *cert. denied*, 469 U.S. 1105, 105 S.Ct. 777, 83 L.Ed.2d 773 (1985).

By its very nature, a conspiracy is clandestine and covert and frequently results in very little direct evidence of an agreement. Blumenthal v. United States, 332 U.S. 539, 68 S.Ct. 248, 92 L.Ed.2d 154 (1947). A conspiracy is generally proved by circumstantial evidence, and it may be proved wholly by such evidence. Iannelli v. United States, 420 U.S. 770, 95 S.Ct. 1284, 43 L.Ed.2d 616 (1975).

While circumstantial evidence may sufficiently support a conspiracy conviction, the government nevertheless must establish proof of each element beyond a reasonable doubt. United States v. Burgos, 94 F.3d 849 (4th

Cir. 1996). To require less would violate the basic principles of our judiciary system. Id. at 858. Circumstantial evidence sufficient to support a conspiracy conviction need not exclude every reasonable hypothesis of innocence, provided that the evidence, taken as a whole, proves beyond a reasonable doubt that a defendant is guilty. Holland v. United States, 348 U.S. 121, 75 S.Ct. 127, 99 L.Ed. 150 (1954).

The uncorroborated testimony of an accomplice may suffice to support a guilty verdict, but only if such testimony is not incredible or insufficient on its face. United States v. Manbeck, 744 F.2d 360, 392 (4th Cir. 1984); See also United States v. Wallace, 32 F.3d 1171, 1173 (7th Cir. 1994). Whether the uncorroborated testimony is sufficient depends upon the probative force of the actual testimony. United States v. Shipp, 409 F.2d 33 (4th Cir.), *cert. denied*, 396 U.S. 864, 90 S.Ct. 140, 24 L.Ed. 117 (1969).

Once an agreement is proven, the government must next prove beyond a reasonable doubt that the defendant is connected to the conspiracy. To prove that the defendant joined the conspiracy, "[t]he government must . . . show the alleged conspirator's knowledge of the conspiracy's purpose and some voluntary and intentional action indicating his participation." United States v. Baker, 985 F.2d 1248, 1255 (4th Cir. 1993). This requires more than showing that the defendant is a bad character. United States v. Bell, 954 F.2d 232, 237 (4th Cir. 1992). Rather, the government must present evidence of "a **specific** agreement to commit a **specific** crime, for the same criminal purpose, on the part of all indicted conspirators." Id. At 238 (emphasis in original). Even if two defendants are both trying to succeed in unlawful activity, if the goals of the defendants are different, no conspiracy will lie. United States v. Guinta, 925 F.2d 758 (4th Cir. 1991).

In the present case, the government went to great lengths to prove that there was an agreement between two (2) or more persons to commit an illegal purpose. The

evidence was uncontroverted that there did in fact exist a conspiracy. The elements which the government failed to prove beyond a reasonable doubt in the case against the Petitioner were the last two: (a) the Petitioner knew of the conspiracy; and, (b) the Petitioner knowingly and voluntarily became a part of the conspiracy.

All the evidence offered by the government against the Petitioner came from questionable sources. By the end of the trial, the government had called a total of eighteen (18) witnesses. Of the 18, seven (7) witnesses linked the Petitioner to the conspiracy. Those same seven (7) had already pled guilty to a conspiracy charge and were testifying in hopes of reducing their sentences. Significantly, not one of the eleven (11) witnesses who had no reason to lie mentioned the Petitioner in their testimony.

Taken in the light most favorable to the government, the uncorroborated testimony of seven (7) biased witnesses is insufficient to prove that the Petitioner knew of the conspiracy and knowingly and voluntarily became a part of the conspiracy. Taken as a whole, the evidence, both from the government and the defense, merely showed that the Petitioner was a drug user, not a conspirator. When one examines the testimony of the seven (7) witnesses, the evidence is not sufficient for a verdict of guilt. In fact, such an examination illustrates the inconsistency among the witnesses' testimony.

Teanna Greene testified that although she knew the Petitioner she never saw Walter Nibblins giver her any drugs nor did she ever see any cocaine cooked at the Petitioner's house and/or apartment. Fay Flemming admitted under cross-examination that she never saw the Petitioner sell drugs and that she never saw the Petitioner receive drugs except for personal use. William Rector testified that he never saw any drug activity while he was at the Petitioner's residence.

Larry Greene testified about trips he and the Petitioner made to pick up packages of cocaine as well as one occasion when cocaine was cooked at the Petitioner's apartment. Bruce Gatewood testified about picking up packages at a house he thought was the Petitioner's, but he was not sure. Walter Nibblins testified about the drug activity that went on in the Petitioner's apartment, but all he said was, "I can't recall if the packages went to that house [the Petitioner's] or not, but there was drug activity going on there."

The testimony listed in the above paragraphs make up the entire case the government had against the Petitioner. All the evidence linking the Petitioner to the conspiracy came from witnesses who had reasons and motives to lie. No unbiased witness linked the Petitioner to the conspiracy. None of the agents working on the case testified about the Petitioner's involvement in the conspiracy. No drugs were seized from the Petitioner. No controlled delivery of a package was ever made to either the Petitioner's house or apartment.

In light of the insufficiency of evidence presented at trial to prove her guilty beyond a reasonable doubt, the Petitioner's conviction should have been reversed by the Fourth Circuit and its failure to do so is error and a denial of due process.

II. Whether the District Court erred by enhancing the Petitioner's base offense level for sentencing purposes due to "obstruction of justice" where this is based solely on her testimony at trial, subjectively deemed untruthful, in violation of her right to due process of law under the Fifth Amendment.

Under United States v. Dunnigan, 507 U.S. 87, 113 S.Ct. 1111; 122 L.Ed.2d 445 (1993), if a defendant objects to a sentence enhancement resulting from her trial testimony, a

district court must review the evidence and make independent finding necessary to establish a willful impediment to or obstruction of justice, or an attempt to do the same, under the perjury definition. Dunnigan states that the district court should address each element of the alleged perjury in a separate and clear finding. Id. at 95.

Dunnigan's separate and clear finding standard left some question as to what burden the government actually had when proving a defendant's perjury that would warrant this enhancement. This Court clarified the burden in United States v. Smith, 62 F.3d 641 (4th Cir. 1995), by stating the following:

> Because the government cannot secure a sentencing enhancement on the grounds of perjury unless it proves each of the foregoing elements by a **preponderance of the evidence**, an enhancement under U.S.S.G. § 3C1.1 does not apply automatically every time a criminal defendant who testifies at trial is convicted. (emphasis added)

Id. At 646-647. And yet, a preponderance of the evidence standard almost calls for an automatic application of the enhancement.

In light of the "trial-like" hearing required by Dunnigan at sentencing, the government should be required to prove the perjury beyond a reasonable doubt. This is particularly important when, as here, the enhancement results in an additional penitentiary sentence that is close to if not equal to a sentence if a defendant was actually charged, tried and convicted of perjury.

In addition to the purely legal argument based on due process of law, the Petitioner's case presents a factual argument as well. The elements the government must prove (under whatever standard) are: (1) that the Petitioner gave false testimony; (2) that the false testimony related to a

material matter; and (3) that it was given with an intent to deceive. Did the Petitioner, in fact, give false testimony? She admitted that she was a user. That testimony was consistent with what the government's witnesses had to say about her. She did not give false testimony regarding her personal involvement with drugs. The Petitioner repeatedly denied her involvement in the conspiracy. Was that false testimony? Was that inconsistent with the evidence presented by the government? Not necessarily. The Petitioner knew most of the people who testified at her trial merely by living in the tight knit community of Culpeper, Virginia. Her mere association with people she has known most of her life should not be the basis for a conviction of conspiracy. The Petitioner argues that she did not give false testimony, and the District Court's finding that she did is clearly erroneous.

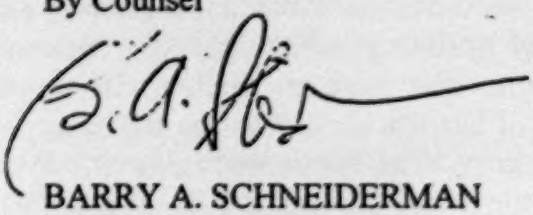
Based on the foregoing, the Fourth Circuit should have vacated the Petitioner's obstruction of justice enhancement and remanded the case for re-sentencing on that issue. Its failure to do so is error and a denial of due process.

CONCLUSION

The Petitioner has raised fundamental constitutional issues in this appeal and the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

CHERYL APPERSON
By Counsel



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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-4900

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.
NERIKA JENKINS,
Defendant-Appellant.

No. 97-4963

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.
CHERYL APPERSON,
Defendant-Appellant.

No. 97-4964

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.
MIKE THOMPSON,
Defendant-Appellant.

Appeals from the United States District Court
for the Western District of Virginia, at Charlottesville.
James H. Michael, Jr., Senior District Judge.
(CR-95-66)

Submitted: May 19, 1998
Decided: July 1, 1998
Entered: July 1, 1998

Before NIEMEYER, WILLIAMS, and MICHAEL, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

William J. Rogers, Sr., Staunton, Virginia, for Appellant Thompson; Liezelle Agustin Dugger, JENKINS & CARMEL, P.L.C., Charlottesville, Virginia, for Appellant Apperson; Bruce Karl Tyler, Afton, Virginia, for Appellant Jenkins. Robert P. Crouch, Jr., United States Attorney, Ray B. Fitzgerald, Jr., Assistant United States Attorney,Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

In these consolidated appeals, Nerika Lakisha Jenkins, Cheryl Apperson and Mike Thompson each appeal their jury convictions of conspiracy to possess with intent to distribute and to distribute a mixture or substance containing cocaine base or "crack," in violation of 21 U.S.C. ' 846 (1994). All three defendants challenge the sufficiency of the evidence to support their convictions. Jenkins and Apperson challenge sentencing determinations made under the Sentencing Guidelines. Finding

no reversible error, we affirm.

Jenkins, Apperson and Thompson were charged for their roles in a conspiracy to distribute crack cocaine in the Culpeper, Virginia area. Viewing the evidence in the light most favorable to the Government, as we must, we find there was sufficient evidence to sustain the jury verdicts. See Glasser v. United States, 315 U.S. 60, 80 (1942). Evidence at trial consisted mainly of testimony from Appellants' co-conspirators. According to trial testimony, Paul Jones, a New York drug dealer, supplied cocaine to various members of the by either mailing it by way of UPS or having it personally delivered. On some occasions, the delivery was made personally by Jenkins. Jenkins was also responsible for shipping some of the packages to Culpeper and she also received the money raised from the sale of the crack by way of wire transfers. At least on one occasion, Jenkins attempted to collect money owed Jones from one of the Culpeper drug dealers.

Apperson allowed her residence to be used as a meeting place for Jones and other members of the conspiracy. She was also the named recipient of some of the UPS packages, which she would turn over to other members of conspiracy. Apperson also permitted other members of the conspiracy to use her residence to cook the cocaine into crack cocaine. A scale used to weigh the cocaine was recovered from her home.

Thompson received a package of cocaine which he agreed to turn over to another member of the conspiracy in exchange for an eighth-of-an-ounce of cocaine. Thompson informed the intended recipient when the package arrived and hid the package at a relative's home until it was picked up. After the package was picked up, Thompson attempted to collect the cocaine he was to receive.

"To sustain a conviction[,] the evidence, when viewed in the light most favorable to the government, must be sufficient for a rational trier of fact to have found the essential elements of the crime beyond a reasonable doubt." United

States v. Brewer, 1 F.3d 1430, 1437 (4th Cir. 1993); see also Glasser, 315 U.S. at 80. Circumstantial as well as direct evidence is considered, and the government is given the benefit of all reasonable inferences from the facts proven to those sought to be established. See United States v. Tresvant, 677 F.2d 1018, 1021 (4th Cir. 1982). "[A]n appellate court's reversal of a conviction on grounds of insufficient evidence should be `confined to cases where the prosecution's failure is clear.'" United States v. Jones, 735 F.2d 785, 791 (4th Cir. 1984) (quoting Burks v. United States, 437 U.S. 1, 17 (1978)). During this inquiry, this Court neither weighs evidence nor reviews witness credibility. See United States v. Saunders, 886 F.2d 56, 60 (4th Cir. 1989).

To support the convictions under ' 846, the Government was required to prove that there was an agreement between two or more persons to violate the federal drug laws, that the defendants knew of it, and that they voluntarily joined it. See United States v. Burgos, 94 F.3d 849, 857 (4th Cir. 1996) (in banc), cert. denied, ___ U.S. ___, 65 U.S.L.W. 3586 (U.S. Feb. 24, 1997) (No. 96-6868). By its very nature, a conspiracy is clandestine and covert, thereby frequently resulting in little direct evidence of such an agreement. See Blumenthal v. United States, 332 U.S. 539, 557 (1947); United States v. Wilson, 721 F.2d 967, 973 (4th Cir. 1983). Hence, a conspiracy generally is proved by circumstantial evidence and the context in which the circumstantial evidence is adduced. See Iannelli v. United States, 420 U.S. 770, 777 n.10 (1975); United States v. Dozie, 27 F.3d 95, 97 (4th Cir. 1994). Clearly, in this instance, the evidence overwhelmingly supports the conspiracy convictions.

Both Jenkins and Apperson assert that the uncorroborated testimony of numerous co-conspirators is insufficient. However, "this circuit recognizes that the testimony of a defendant's accomplices, standing alone and uncorroborated, can provide an adequate basis for conviction." United States v. Burns, 990 F.2d 1426, 1439 (4th Cir. 1993)

(citations omitted). Furthermore, "it is for the jury and not the appellate court to weigh the evidence and judge the credibility of the witnesses." Tresvant, 677 F.2d at 1021. In addition, although the evidence may lead to different conclusions and interpretations, the jury decides which interpretation to believe. See United States v. Garcia, 868 F.2d 114, 116 (4th Cir. 1989).

Thompson asserts that there was no direct evidence that he knew the contents of the package. Quite the contrary, one witness testified that Thompson told him that he knew what was in the package. Furthermore, Thompson also made an effort to hide the package at another person's home and expected to be paid in crack cocaine. Because the evidence was sufficient to support Thompson's conviction, the court properly denied Thompson's motion to dismiss.

Jenkins also contends that the sentencing court erred in attributing 1120 grams of crack cocaine to Jenkins to arrive at an offense level of 36. See United States Sentencing Guidelines Manual ' 2D1.1(c) (1995). We review the district court's determination of the relevant quantity of drugs for clear error. See United States v. Fletcher, 74 F.3d 49, 55 (4th Cir. 1996), cert. denied, ___ U.S. ___, 65 U.S.L.W. 3260 (U.S. Oct. 7, 1996) (No. 95-9447). We find that the court conducted a thorough and detailed review of the evidence to arrive at its finding. In addition to the presentence report, the court relied largely on trial testimony and the demeanor of witnesses. "While this court is generally reluctant to overturn factual findings of the trial court, this is doubly so where the question goes to the demeanor and credibility of witnesses at trial, since the district court is so much better situated to evaluate these matters." United States v. D'Anjou, 16 F.3d 604, 614 (4th Cir. 1994).

The court found trial testimony established over 500 grams of crack directly linked to Jenkins, which, disregarding the remaining amount which the court found was reasonably foreseeable given Jenkins's role in the conspiracy, still leaves Jenkins with a base offense level of 36. In sum, we do not find

that the court erred in this instance. Nor did the court err in concluding that the object of the conspiracy was crack cocaine, even though in some instances it was delivered as powder cocaine and later converted into crack cocaine.

Apperson contends that the court erred in imposing a two-level enhancement to the offense level for obstruction of justice based upon the finding that she gave false material testimony at trial. See USSG ' 3C1.1 (1995). A witness commits perjury if she: (1) gives false testimony; (2) concerning a material matter; (3) with the willful intent to deceive, rather than as a result of confusion or mistake. See United States v. Smith, 62 F.3d 641, 646 (4th Cir. 1995). Once the defendant objects to an adjustment based upon perjury, the district court "must review the evidence and make independent findings necessary to establish a willful impediment to, or obstruction of, justice, or an attempt to do the same, under the perjury definition." See United States v. Dunnigan, 507 U.S. 87, 95 (1993). Here, the court found that Apperson gave false testimony concerning a material matter in that she denied receiving packages of cocaine. The court further found that such testimony was intended to deceive in order to rebut the substantial testimony linking her to the conspiracy. Thus, the court's finding encompassed all of the factual predicates for a finding of perjury. See id.; see also United States v. Keith, 42 F.3d 234, 240-41 (4th Cir. 1994).

Based on the foregoing, we affirm the convictions and sentences. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid in the decisional process.

AFFIRMED

AO245B (Rev. 3/95) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Western District of Virginia

UNITED STATES OF AMERICA

v.

CHERYL APPERSON

JUDGMENT IN A CRIMINAL CASE

Entered: November 26, 1997

(For Offenses Committed On or After November 1, 1987)

Case Number : 3:95-00066-08

Llezelle Dugger, Esq.
Defendant's Attorney

THE DEFENDANT:

X X was found guilty on count one after the plea of not guilty.

Title & Section
21:846

Nature of Offense
Conspiracy to distribute cocaine base

Date Offense Concluded
11/30/95

Count Number
One

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 227-88-8424

Defendant's Date of Birth: 5/13/57

Defendant's USM No.: 05820-084

Defendant's Residence of Address:
14471 Shanktown Road
Reva, VA 22735

Defendant's Mailing Address: Custody

Date of Imposition of Judgment: 20 November, 1997

/s/ James H. Michael, Jr.
Signature of Judicial Officer

Honorable James H. Michael, Jr.
United States District Judge
Name & Title of Judicial Officer

11/26/97
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of Two Hundred (200) Months.

XX The court makes the following recommendations to the Bureau of Prisons:

Defendant be incarcerated as close to home as possible in a facility which offers medical care.

XX The Defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of Sixty (60) Months.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release form the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from

imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

XX The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set for in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;

2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4. The defendant shall support his or her dependents and meet other family responsibilities;

5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for

schooling, training, or other acceptable reasons;

6. The defendant shall notify the probation officer within 72 hours of any change in residence or employment;

7. The defendant shall refrain from excessive use of alcohol;

8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;

9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record of personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$50.00	$250.00	$

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A. **XX** in full immediately; or

STATEMENT OF REASONS

XX The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by Court:

Total Offense Level: 30

Criminal History Category: 1

Imprisonment Range: 235 to 293 months

Supervised Release Range: 5 years

Fine Range: $25,000. to $4,000,000

XX Fine waived or below the guideline range because of inability to pay.

XX The sentence departs from the guideline range:

XX for the following specific reason(s): For reasons indicated form the bench due to defendant's medical condition.